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Of Proposed Attorneys for Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re:

CREATIVE LIGHTING SOLUTIONS, INC.

Debtor.

Case No. 19-34296-pcm11

NOTICE OF HEARING

**YOU ARE NOTIFIED THAT A HEARING at which testimony will not be received,
WILL BE HELD AS FOLLOWS:**

**DEBTOR'S MOTION FOR AUTHORITY TO PAY PREPETITION PAYROLL,
PAYROLL TAXES, AND WORKERS' COMPENSATION PREMIUMS (the
"Motion"),**

WILL BE HELD in Courtroom #1 at the U.S. Bankruptcy Court located at 1050 SW Sixth Ave., #700, Portland, OR 97204 on November 26th at 1:30 p.m.

OUT OF TOWN parties wishing to appear at the hearing by telephone may call the Toll Free Call-In No. (888) 684-8852; Access Code: 1238244. See attached Court's LBF 888 (Telephone Hearing Requirements). Each participant must comply with each hearing requirement listed on LBF 888. Note: If you have problems connecting, call the court at (503) 326-1500.

A copy of the Motion was served on all participants of the Court's Case Management/Electronic Case File system on November 21, 2019. If you wish to obtain an additional copy of the Motion please contact Debtor's counsel, Nicholas J. Henderson, Motschenbacher & Blattner LLP, 117 SW Taylor Street, Suite 300, Portland, OR 97204, phone: (503) 417-0500, or e-mail: nhenderson@portlaw.com.

I hereby certify that on November 22, 2019, I served copies of this Notice by U.S. Mail, postage prepaid, on the Debtor; any debtor's attorney; the U.S. Trustee; and all creditors listed on the mailing matrix maintained by the Clerk of the Court on which is attached.

MOTSCHENBACHER & BLATTNER LLP

/s/ Nicholas J. Henderson

Nicholas J. Henderson, OSB# 074027
Of Proposed Attorneys for Debtor

TELEPHONE HEARING REQUIREMENTS

1. You must call in and connect to the telephone hearing line or personally appear in the judge's courtroom no later than your scheduled hearing time. The court will not call you.
2. You may be asked to call again from another phone if your connection is weak or creates static or disruptive noise.
3. Please mute your phone when you are not speaking. If you do not have a mute function on your phone, press *6 to mute and *6 again to unmute if you need to speak. Do not put the court on hold if it will result in music or other noise. If available, set the phone to "Do Not Disturb" so it will not ring during the hearing.
4. When it is time for you to speak, take your phone off the "speaker" option or headset to minimize background noise and improve sound quality. Position the telephone to minimize paper rustling. Do not use a keyboard or talk with others in the room. Be aware that telephone hearings may be amplified throughout the courtroom.
5. Do not announce your presence until the court calls your case. Simply stay on the line, even if there is only silence, until the judge starts the hearings, and then continue to listen quietly until your case is called.
6. Whenever speaking, first identify yourself. When the court calls your case, it's helpful if the moving party speaks first to avoid multiple parties speaking at the same time.
7. Be on time. The judge may handle late calls the same as a late appearance in the courtroom.

Clerk, U.S. Bankruptcy Court

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Of Proposed Attorneys for Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re:

**CREATIVE LIGHTING SOLUTIONS,
INC.,**

Debtor.

Case No. 19-34296-pcm11

**MOTION FOR AUTHORITY TO
PAY PREPETITION PAYROLL,
PAYROLL TAXES AND WORKERS'
COMPENSATION PREMIUMS;
PAY CLAIMS RELATED TO
EMPLOYEE BENEFIT PLAN; AND
CONTINUING USE OF PAYROLL
SERVICE**

**Creative Lighting Solutions, Inc (the "Debtor"), as debtor-in-possession, hereby
moves this Court for entry of an order authorizing the Debtor to pay prepetition
payroll, payroll taxes and workers' compensation insurance premiums associated
with Debtor's current pay period (November 16, 2019 through November 30, 2019)
on Debtor's regularly scheduled payday (December 5) and in support, represents
and states:**

1. On November 21, 2019 (the "Petition Date"), the Debtor commenced a reorganization case by the filing of a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the "Code").

2. Pursuant to § 1107 of the Code, the Debtor is continuing in possession of the Debtor's property and is operating and managing the Debtor's business as a debtor-in-possession.

3. The Debtor seeks authority to pay any prepetition wages, other compensation, vacation and paid leave, federal and state withholding taxes, payroll taxes, and all other employee benefits that the Debtor pays in the ordinary course of business. The Debtor also seeks authority to pay priority unsecured claims for benefits of the Debtor's health insurance plan and an employee benefit plan, as those claims come due. Debtor further seeks authority to continue use of its existing payroll service.

4. In the case of wages, commissions, federal and state withholding taxes, and payroll taxes, the Debtor requests authority to pay these amounts on the regularly scheduled payroll date which is December 5. The amount of wages and commissions per employee which Debtor seeks authority to pay will be detailed in an exhibit available at the time of the hearing; a draft of the exhibit is attached hereto as **Exhibit A, based on the best information available to the Debtor. The amounts that Debtor requests authority to pay is limited to the priority amount of 11 USC § 507(a), and is limited to the pay periods inclusive of the dates of November 16, 2019 through November 21, 2019. With respect to other**

compensation, vacation and paid leave and all other employee benefits, Debtor requests authority to pay these amounts in the ordinary course of business. The amounts that Debtor requests authority to pay is limited to the priority amount of 11 USC § 507(a) and is limited to the period November 16, 2019 through the Petition Date.

5. The Debtor currently uses Quickbooks Desktop ("Quickbooks") as its payroll provider. The Debtor requests authority to continue using Quickbooks for its payroll services post-petition.

6. Pursuant to Code Sections 507(a)(4), 507(a)(5), and 105, and the judicially recognized "necessity of payment doctrine," the Debtor requests authority to pay any prepetition wages, other compensation, vacation and paid leave, federal and state withholding taxes, payroll taxes, contributions to employee-benefit plans, and all other employee benefits that the Debtor pays in the ordinary course of business.

7. The gross amount due for the pay period for payroll for the December 5 payday is approximately \$14,359, and the associated payroll taxes are approximately \$745. The total amount of Debtor's request is approximately \$15,104.

ARGUMENT

As the Court stated in *In re Ionosphere Clubs, Inc.*, 98 B.R. 174 (Bankr. S.D.N.Y. 1989), "the paramount policy and goal of Chapter 11, to which all other bankruptcy policies are subordinated, is the rehabilitation of the Debtor. This policy

was clearly articulated by the United States Supreme Court in *NLRB v. Bildisco and Bildisco*, 465 U.S. 513 (1984) when the Court stated, 'the fundamental purpose of reorganization is to prevent the debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.'" *In re Ionosphere* at 176–77 (citations omitted). The *Ionosphere* Court went on to note that "Section 105 may indeed empower the Bankruptcy Courts to authorize the immediate payment of prepetition claims when essential to the survival of a debtor." *Id.* at 177; see also *In re Baldwin United Corp.*, 765 F.2d 343, 348 (2d Cir. 1985).

Like the Court in *Ionosphere*, the Bankruptcy Court in *In re Chateaugay Corp.*, 80 B.R. 279 (S.D.N.Y. 1987), authorized the Debtor to pay certain prepetition wages, salaries, reimbursement expenses and employment benefits, as well as certain workers compensation obligations, which claims totaled in excess of \$250 million. A group of similarly situated creditors (who the debtor did not seek authorization to pay) attacked the Court's order on grounds that such selective payments violated Section 507 of the Code. On appeal, the District Court rejected this argument and explained:

"A rigid application of the priorities of §507 would be inconsistent with the fundamental purpose of reorganization and of the Act's grant of equity powers to bankruptcy courts, which is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately."

The District Court thus upheld the Bankruptcy Court's order, which had concluded that if sound business judgment exists to pay certain prepetition claims, and the payments serve to preserve and maximize the value of the debtor's estate, the Court should authorize the payments. *Id.* at 282.

In *In re Gulf Air, Inc.*, 112 B.R. 152 (Bankr. W.D. La. 1989), the Court applied the "necessity of payment" doctrine and authorized the debtor to pay certain prepetition employee claims. In *Gulf Air*, the debtor (a charter air carrier) sought authority to pay all prepetition amounts owed to salaried and hourly employees and flight crew members, including their prepetition expenses. Furthermore, the debtor sought authority to pay prepetition health and life insurance premiums for employees and their dependents, in addition to workers' compensation. The debtor in that case asserted that the success of the reorganization was dependent upon continued employment of its skilled employees. Without immediate payment to the employees, the employees would cease working, thereby leaving the debtor incapable of operating. The Court determined that the immediate payment of the employee claims was in the best interest of the debtor and its estate, and authorized the debtor to pay the prepetition employee claims.

The Debtor owns and operates a business that specializes in the manufacturing and installation of LED lighting products for miscellaneous venues and businesses throughout the Portland metropolitan area. The Debtor's business depends on the sale of lighting materials and equipment, the completion of renovations and remodeling projecting, as well as custom installations.

The Debtor's operation employs approximately 10 individuals who are paid on a salary and hourly basis. Much of Debtor's revenues are a result of the Debtor's contracts to sell the Debtor's products and services, which are cultivated by the Debtor's employees to the Debtor's customers. If the Debtor fails to continue work at the Debtor's sites, the Debtor will cease receiving payments under the Debtor's contracts and risks that contracts may be terminated for cause. If the Debtor is unable to pay the Debtor's employees, the employees will suffer hardship and likely cease working, resulting in a loss of revenue and inhibiting a successful reorganization.

Likewise, the failure of the Debtor to maintain payments consistent with its health insurance plan will result in employee hardship. Payments of health insurance benefits are entitled to priority. *Ivey v. Great-West Life & Annuity Ins. Co. (In re J.G. Furniture Group, Inc.)*, 405 F.3d 191 (4th Cir. 2005) (affording claim for insurance premiums and fees priority status, and determining the applicable 'services rendered' date to be the date of the claimant's services (rather than the employee's)); *Official Labor Creditors Comm. v. Jet Fla. Sys., Inc., (In re Jet Fla. Sys., Inc.)*, 80 B.R. 544 (S.D. Fla. 1987)(determining individuals seeking reimbursement for medical expenses entitled to priority where employer maintained self-insurance program).

Allowing the Debtor to pay the Debtor's employees' prepetition claims and funding the Debtor's insurance plan for its employees is necessary to both preserve

the value of the estate and to put the Debtor in a position in which the Debtor can successfully reorganize.

WHEREFORE, Debtor respectfully requests that this Court enter an order allowing the Debtor to pay the payroll and other payroll related items referred to herein.

DATED: November 25, 2019

MOTSCHENBACHER & BLATTNER LLP

By:/s/ NICHOLAS J. HENDERSON

Nicholas J. Henderson, OSB #074027

Troy G. Sexton, OSB #115184

Of Proposed Attorneys for Debtor

EXHIBIT A

PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT

DISTRICT OF Oregon

In re:

**CREATIVE LIGHTING SOLUTIONS,
INC**

Debtor.

Case No. 19-34296-pcm11

**ORDER GRANTING MOTION FOR
AUTHORITY TO PAY PREPETITION
PAYROLL, PAYROLL TAXES AND
WORKERS' COMPENSATION
PREMIUMS; PAY CLAIMS RELATED
TO EMPLOYEE BENEFIT PLAN; AND
CONTINUING USE OF PAYROLL
SERVICE**

THIS MATTER having come before the Court upon the Debtor, Creative Lighting Solutions, Inc ("Debtor"), Motion for Authority to Pay Prepetition Payroll, Payroll Taxes, and Workers' Compensation Premiums [Dkt. ____] (the "Payroll Motion") filed by the Debtor. Based on the entire record of this case, the Court hereby ORDERS that the Debtor's Payroll Motion is GRANTED; and

1) The Debtor is authorized to pay prepetition payroll, payroll taxes, and workers' compensation insurance premiums and all other employee expenses associated

with its current payroll (November 16, 2019 through November 30, 2019) on its next regularly scheduled payday, December 5.

2) The Debtor is authorize to continue to use its prepetition payroll service provider.

###

I certify that I have complied with the requirements of LBR 9021-1 (a)(2)(A).

Order Presented by:

**MOTSCHENBACHER & BLATTNER
LLP**

By:/s/ NICHOLAS J. HENDERSON

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Of Proposed Attorneys for Debtor

Service List:

First Class Mail:

Electronic Mail:

**The foregoing was served on all CM/ECF
participants through the Court's Case
Management/Electronic Case File system.**

EXHIBIT A
PAYROLL AMOUNT

**EXHIBIT 1
PAYROLL AMOUNTS**

Emp. Initial	Gross Wages Owed as of 11/21	Est. Employment Taxes	Total Accrued Vacation as of 11/21	Claim Amt.	Priority Amt.
AR	\$611	\$109.98	\$2,544	\$3,155	\$3,265
AH	\$485	\$87.30	\$2,019	\$2,504	\$2,591
CM	\$285	\$51.30	\$1,186	\$1,471	\$1,522
GJ	\$180	\$32.40	\$360	\$540	\$572
MJ	\$432	\$77.76	\$0	\$432	\$510
MB	\$923	\$166.14	\$0	\$923	\$1,089
TH	\$485	\$87.30	\$2,726	\$3,211	\$3,298
WH	\$96	\$17.28	\$0	\$96	\$113
WK	\$640	\$115.20	\$1,387	\$2,027	\$2,142
Totals	\$4,137	745	\$10,222	\$14,359	\$15,104